

Assembly Bill No. 536

CHAPTER 352

An act to amend Section 4115 of the Business and Professions Code, relating to pharmacy technicians.

[Approved by Governor September 26, 2001. Filed
with Secretary of State September 27, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 536, Bates. Pharmacy technicians.

The Pharmacy Law authorizes a pharmacy technician to perform nondiscretionary tasks only while assisting, and while under the direct supervision and control of, a pharmacist. Existing law requires any pharmacist responsible for a pharmacy technician to be on the premises at all times and requires the pharmacy technician to be within the pharmacist's view, except when the pharmacy technician is employed to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility. Existing law provides that the ratio of pharmacy technicians to pharmacists shall not exceed one to one when the pharmacy technician is assisting the pharmacist by the performance of nondiscretionary tasks. Existing law also authorizes a minimum ratio of pharmacy technicians to pharmacists of at least one technician for each pharmacist when the technician is performing nondiscretionary tasks in connection with filling prescriptions for an inpatient of a licensed health facility and for a patient of a licensed home health agency.

This bill would provide that, except for clerical functions, a pharmacy with one pharmacist may have only one pharmacy technician when the technician is assisting the pharmacist by the performance of nondiscretionary tasks and that the ratio of pharmacy technicians assisting any additional pharmacist by the performance of nondiscretionary tasks may not exceed a 2 to one ratio. This bill would also authorize at least one pharmacy technician for a single pharmacist in a pharmacy, and at least 2 technicians for each additional pharmacist, when the technician is performing nondiscretionary tasks in connection with filling prescriptions for an inpatient of a licensed health facility and for a patient of a licensed home health agency. The bill would allow a pharmacist assigned to supervise a 2nd pharmacy technician to refuse to supervise the technician in specified circumstances, and would prohibit an employer from discharging, disciplining, or discriminating against a pharmacist for doing so.

Existing law generally makes it a misdemeanor to knowingly violate the Pharmacy Law. Because violations of this bill would be a misdemeanor, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 4115 of the Business and Professions Code is amended to read:

4115. (a) Notwithstanding any other provision of law, a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.

(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty, nor does this section authorize the use of a pharmacy technician to perform tasks specified in subdivision (a) except under the direct supervision and control of a pharmacist.

(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.

(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the direct supervision and control of a pharmacist. Any pharmacy that employs a pharmacy technician to perform tasks specified in subdivision (a) shall do so in conformity with the regulations adopted by the board pursuant to this subdivision.

(e) (1) No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician as set forth in Section 4202.

(2) The registration requirements in paragraph (1) and Section 4202 shall not apply during the first year of employment for a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, or for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.



(f) The performance of duties by a pharmacy technician shall be under the direct supervision and control of a pharmacist. The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician. A pharmacy technician may perform the duties, as specified in subdivision (a), only under the immediate, personal supervision and control of a pharmacist. Any pharmacist responsible for a pharmacy technician shall be on the premises at all times, and the pharmacy technician shall be within the pharmacist's view. A pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

This subdivision shall not apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility. Notwithstanding the exemption in this subdivision, the requirements of subdivisions (a) and (b) shall apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility.

(g) (1) A pharmacy with only one pharmacist shall have no more than one pharmacy technician performing the tasks specified in subdivision (a). The ratio of pharmacy technicians performing the tasks specified in subdivision (a) to any additional pharmacist shall not exceed 2:1, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio is applicable to all practice settings, except for an inpatient of a licensed health facility, a patient of a licensed home health agency, as specified in paragraph (2), an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, and for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(2) The board may adopt regulations establishing the ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists applicable to the filling of prescriptions of an inpatient of a licensed health facility and for a patient of a licensed home health agency. Any ratio established by the board pursuant to this subdivision shall allow, at a minimum, at least one pharmacy technician for a single pharmacist in a pharmacy and two pharmacy technicians for each additional pharmacist, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117.

(3) A pharmacist scheduled to supervise a second pharmacy technician may refuse to supervise a second pharmacy technician if the pharmacist determines, in the exercise of his or her professional judgment, that permitting the second pharmacy technician to be on duty



would interfere with the effective performance of the pharmacist's responsibilities under this chapter. A pharmacist assigned to supervise a second pharmacy technician shall notify the pharmacist in charge in writing of his or her determination, specifying the circumstances of concern with respect to the pharmacy or the pharmacy technician that have led to the determination, within a reasonable period, but not to exceed 24 hours, after the posting of the relevant schedule. No entity employing a pharmacist may discharge, discipline, or otherwise discriminate against any pharmacist in the terms and conditions of employment for exercising or attempting to exercise in good faith the right established pursuant to this paragraph.

(h) Notwithstanding subdivisions (b) and (f), the board shall by regulation establish conditions to permit the temporary absence of a pharmacist for breaks and lunch periods pursuant to Section 512 of the Labor Code and the orders of the Industrial Welfare Commission without closing the pharmacy. During these temporary absences, a pharmacy technician may, at the discretion of the pharmacist, remain in the pharmacy but may only perform nondiscretionary tasks. The pharmacist shall be responsible for a pharmacy technician and shall review any task performed by a pharmacy technician during the pharmacist's temporary absence. Nothing in this subdivision shall be construed to authorize a pharmacist to supervise pharmacy technicians in greater ratios than those described in subdivision (g).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

